Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. 06-465

IN THE
Supreme Court of the United States

SHARON PRICE AND MICHAEL FRUTH, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
Petitioners,

v.

PHILIP MORRIS INCORPORATED, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

BRIEF FOR RESPONDENT LAW SCHOOLS IN SUPPORT OF PETITIONERS

J. TIMOTHY EATON
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October 23, 2006

PARTIES TO THE PROCEEDINGS

Petitioners omitted from the caption of their petition the following law schools that, by order dated September 1, 2004 (*see* App., *infra*), were granted leave by the Illinois Supreme Court to file a brief as appellees in the proceedings below and therefore are respondents in this Court:

Washington University (St. Louis) School of Law
St. Louis University School of Law
University of Illinois College of Law
Southern Illinois University School of Law
Northern Illinois University College of Law
Northwestern University School of Law
University of Chicago Law School
The John Marshall School of Law
Chicago-Kent College of Law (I.I.T.)
DePaul University College of Law
Loyola University Chicago School of Law

INTRODUCTION

Respondent-Law Schools ("Law Schools") were added as co-appellees before the Illinois Supreme Court with the Petitioners in this proceeding because the Law Schools, depending upon the outcome of that appeal, could have received proceeds from the unclaimed compensatory award. *See* Pet. App. 2a. The proceeds referred to by the Illinois court stem from that part of the trial court's judgment of March 21, 2003, which held:

> 7. That in the event there should remain unclaimed funds in the compensatory award rendered herein; then, under the Doctrine of Cy Pres, all said unclaimed funds, when so finally determined by this Court, hereby, are ordered then to be distributed to the following institutions through the Illinois Bar Foundation. Whereupon, the Illinois Bar Foundation is, hereby, appointed to receive, account, protect and so distribute said funds. The distribution of these funds is ordered as follows:
>
> (1) Three percent (3%) to each of the following Law Schools for enhancing studies concerned with the protection of the consumer and with other socio-economic areas of law. Said funds may also be used for providing financial assistance to needy law students. (The total of this award is thirty-three percent (33)):
>
> Washington University (St. Louis) School of Law
>
> St. Louis University School of Law
>
> University of Illinois College of Law
>
> Southern Illinois University School of Law
>
> Northern Illinois University College of Law
>
> Northwestern University School of Law
>
> University of Chicago Law School
>
> John Marshall School of Law
>
> Chicago-Kent College of Law (I.I.T.)

DePaul University College of Law

Loyola University Chicago School of Law

Id. at 214a-215a.

The Law Schools filed a brief in the Illinois Supreme Court addressing the issue of the doctrine of cy pres and why its application was appropriate in this consumer class action. The issue of the application of the doctrine of cy pres was not addressed by the Illinois high court in light of its reversal of the compensatory award.

Although the issue addressed by the Law Schools in the Illinois court is not at issue before this Court, the question presented to this Court is important to the Law Schools because law schools have in the past and may in the future be beneficiaries of cy pres awards in judgments rendered under the Illinois Consumer Fraud and Deceptive Business Practices Act and the Illinois Uniform Deceptive Trade Practices Act, the statutes at issue in this appeal. The Law Schools are concerned that, if state courts too narrowly restrict the application of those acts, the prospect of future such awards will be more remote. The question presented to this Court is an important one, therefore, not only for the consumer class in this action, but for the many worthwhile beneficiaries of consumer class awards that are working with the courts and the legislative bodies in furthering the goals set forth in this important legislation.

THE QUESTION PRESENTED TO THIS COURT IS AN IMPORTANT ONE FOR THIS COURT TO CONSIDER BECAUSE IT MAY IMPACT ADVERSELY THE EFFORTS OF THE STATES AND THE ORGANIZATIONS THAT WORK WITH THEM IN COMBATING CONSUMER FRAUD

The legislative intent in creating consumer fraud acts was to address the societal harm that attends fraud. Consumer class actions have played a critical role in furthering the purposes of these consumer acts. Cy pres distributions arising from these consumer actions in turn have

provided a valuable tool in achieving public policy objectives, which include enforcement, deterrence and disgorgement goals. Cy pres recipients have endeavored to deter fraud and thereby protect consumers in Illinois.

There is no question that law schools and other educational institutions through cy pres awards have engaged in education and training to minimize the likelihood of future fraud in Illinois. The court's decision below threatens to undo that benefit in two ways. First, the decision may well circumscribe operation of the consumer fraud statutes in general, which have contributed to the welfare of consumers in Illinois in many ways. Second, by curtailing operation of the statutes, the decision minimizes further cy pres opportunities that can be utilized to build the foundation for effective outreach efforts to combat fraud in Illinois.

Accordingly, for the reasons stated, this Court should grant the petition for certiorari.

Respectfully submitted,

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October 23, 2006

APPENDIX

[Seal Omitted]

SUPREME COURT OF ILLINOIS

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September 1, 2004

Mr. J. Timothy Eaton
Ungaretti & Harris LLP
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Chicago, IL 60602

In re: Sharon A. Price et al., etc., appellees, v. Philip Morris, Incorporated, appellant. No. 96236

Today the following order was entered in the captioned case:

Motion by Washington University (St. Louis), School of Law, St. Louis University School of Law, University of Illinois College of Law, Southern Illinois University School of Law, Northern Illinois University College of Law, Northwestern University School of Law, University of Chicago Law School, The John Marshall School of Law, Chicago-Kent College of Law (I.I.T.), DePaul University College of Law and Loyola University Chicago School of Law for leave to join as additional appellees and file a brief instanter. Motion allowed.

Order entered by Justice Rarick.

Very truly yours,
/s/ JULEANN HORNYAK
Clerk of the Supreme Court

cc: All Counsel of Record